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VIA ECF

May 7, 2008

Hon. Barbara S. Jones  
United States District Judge,  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, New York

**Re: Fitzgerald v. Thompson**  
S.D.N.Y. 07 Civ. 6851 (BSJ) (DCF)

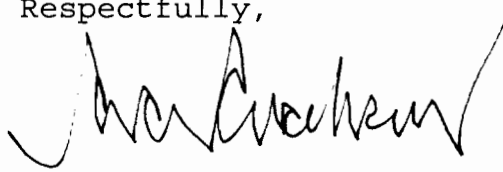
Dear District Judge Jones:

Further to the several motions to dismiss this action pending before Your Honor, we are enclosing for Your Honor's information an opinion of the Supreme Court of the State of New York, Appellate Division, First Judicial Department, rendered yesterday, May 6, 2008, unanimously affirming the decision in State of New York v. Seventh Regiment Fund, 13 Misc. 3d 222 (Sup. Ct. N.Y. Co. 2006), which held after a full trial that the State is the owner of all of the regimental art and artifacts in the Seventh Regiment Armory. The State v. Fund litigation is discussed in our memorandum of law on behalf of the Empire State Development Corporation defendants, dated October 4, 2007, at 25-26.

The Appellate Division's opinion refers to the trial testimony of the President of the Seventh Regiment Fund. That individual is Kenyon B. FitzGerald, the principal plaintiff in the action before this Court.

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Respectfully,

A handwritten signature in black ink, appearing to read 'Joel Graber', with a long, sweeping horizontal line extending to the right.

JOEL GRABER (JG-3337)  
Assistant Attorney General  
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Enc.

cc: (w/ enc. via e-mail)

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--- N.Y.S.2d ----, 2008 WL 1946899 (N.Y.A.D. 1 Dept.), 2008 N.Y. Slip Op. 04216

Supreme Court, Appellate Division, First Department, New York.  
The STATE of New York, Plaintiff-Respondent,

v.

**SEVENTH REGIMENT FUND**, Defendant-Appellant.

May 6, 2008.

Law Office of Philip M. Chiappone, Brooklyn (Philip M. Chiappone of counsel), for appellant.

Andrew M. Cuomo, Attorney General, New York (Patrick J. Walsh of counsel), for respondent.

TOM, J.P., ANDRIAS, NARDELLI, WILLIAMS, JJ.

**\*1** Judgment, Supreme Court, New York County (Richard F. Braun, J.), entered October 27, 2006, after a nonjury trial, declaring plaintiff the owner of certain property, unanimously affirmed, without costs.

The trial court fairly interpreted the evidence in finding that defendant had failed to carry its burden, as the party asserting the statute of limitations, of proving that defense ( *see New York City Campaign Fin. Bd. v. Ortiz*, 38 AD3d 75, 80 [2006] ). In finding defendant to be a bona fide purchaser of the subject property so that plaintiff's conversion claim accrued upon demand and refusal in 1996, rather than at an earlier juncture ( *see* 98 N.Y.2d 249, 260-261 ), the court correctly determined that the 1952 transfer of the property was for value, not just with respect to the \$1 consideration recited in the bill of sale but also in exchange for the assurance that the property would be properly cared for ( *see* UCC 1-201[44][d]; *Apfel v. Prudential-Bache Sec.*, 81 N.Y.2d 470, 475-476 [1993]; *Weiner v. McGraw-Hill, Inc.*, 57 N.Y.2d 458, 464 [1982]; *Hamer v. Sidway*, 124 N.Y. 538, 545 [1891] ). There was no showing that the transfer was not in good faith ( *see* UCC 1-201[19] ), notwithstanding the transferor's possibly ulterior motive. Nor was it shown that defendant had constructive knowledge of any defect in the transferor's title; in fact, the testimony and previously submitted affidavit of defendant's president, defendant's interrogatory response and the public circumstances of the transfer all indicated to the contrary.

In view of the foregoing, it is unnecessary to address defendant's other contentions.

N.Y.A.D. 1 Dept., 2008.

State v. **Seventh Regiment Fund**

--- N.Y.S.2d ----, 2008 WL 1946899 (N.Y.A.D. 1 Dept.), 2008 N.Y. Slip Op. 04216

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